Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O.No. 163 of 2004

The United India Insurance Company Ltd.,
Through Manager, Asley Hal, Dehradun.

..... Appellant

Versus

1.Smt. Mussi Devi W/o late Sri Dheeraj Singh alias Dheeri Pal Singh,
2. Rahul S/o late Sri Dheeraj Singh,
Both Residents of Village Naudhar, Patti-Bhadoor, District-Tehri Garhwal.
3. Trilok Singh Rawat S/o Bishan Singh, R/o Village-Naudhar, Patti-Bhadoor, District-Tehri Garhwal.
(Owner of vehicle No. UP 08-5982).

..... Respondents.

Sri D.S. Patni, learned Counsel for the appellant.
Sri H.M. Raturi & Sri Vipul Painuli, learned counsel for the respondents 1 & 2.

.....
Dated: 23rd Sept., 2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the Opp.party No.2-United India Insurance Company under Section 30 of the Workmen's Compensation Act against the judgment and award dated 23.03.204 passed by the Workmen's Compensation Commissioner, Tehri Garhwal in Workmen's Compensation Case No. 35 of 1999, Mussi Devi and another versus Trilok Singh Rawat, whereby The Workmen's Compensation Commissioner (*hereinafter referred to as the Commissioner)* allowed the claim petition of the claimants for compensation of Rs. 2,11,750/- against the United India Insurance Company.

2- Brief facts giving rise to this appeal are that deceased Dheeraj Singh was in the employment of Opp.party No.1 as conductor in Tipper No. UP 08-5982. On 24.7.1999 the said Tipper met with an accident on Lambgaon-Kotalgaon road due to which deceased sustained grievous injuries and died on the spot. He was getting Rs. 2000/- as monthly salary and Rs.20/-per day as other expenses. Deceased Dheeraj Singh was 23 years old at the time of death in the said accident. The Opp.party No.1 lodged the report of the said incident. The petitioners filed the petition for compensation of Rs. 2,19,950/- alongwith interest, on which the Commissioner issued notice to the opposite parties.

3- The opposite parties contested the case before the Commissioner by filing their separate written statements denying the allegations of the claim petition. The Commissioner, on the pleadings of the parties, framed necessary issued and on the basis of the evidence allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in the appeal.

4- The learned counsel for the appellant contended that the finding of the learned Commissioner on issue No.2 is perverse as the same is based on surmises and conjectures. We have gone through the material of the case and perused the impugned judgment. The learned Commissioner framed as many as five issues in the case. The issue No.2 as framed is as follows:-

"What was the salary and age of deceased late Dheeraj Singh?"

5. The claimants in the claim petition have alleged that the deceased-workman was getting Rs. 2000/- per month as salary plus Rs. 20/- per day as daily expenses, while the Opp.party No.1 in his written statement admitted

that he was paying Rs. 1700/- per month to the deceased. The opposite party No. 1 in support of his assertion did not adduce any oral or documentary evidence by which it could be proved that Rs. 1700/- was being paid to the deceased-workman as monthly salary. One of the witnesses produced by the claimants on oath stated that the deceased was being paid Rs. 2000/- plus Rs. 50/- per day as fooding expenses while the other witness on oath stated that the deceased was getting Rs. 3000/- per month plus Rs. 50/- per day as fooding expenses. But no documentary evidence was produced in support of this statement. The Opposite party-Insurance Company also did not adduce any evidence in this regard. The learned Commissioner on the basis of said evidence rightly held that the deceased Dheeraj Singh was getting Rs. 2000/- per month as salary. The claimants in their statements on oath also stated that the deceased was 23 years old but they did not file any certificate or copy of Pariwar Register in support of their statement, while in the post mortem report the age of deceased has been mentioned as 28 years and according to this report the age of the deceased has rightly been held as 28 years at the time of accident. We are of the opinion that the learned Commissioner has rightly awarded the amount of compensation according to the relevant factors provided in Schedule IV appended to Sec.4 of the Workmen's Compensation Act, 1923. We find no reasons to interfere with the impugned award. Accordingly, the appeal has no force on merit.

6- The appeal is hereby dismissed. The impugned order dated 23.3.2004 is affirmed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

23.9.2004
P.Singh